

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

VICTOR P. MONTOYA,

Plaintiff.

V.

Case No. 2:16-cv-00454-RFB-NJK

ORDER

LELAND DUDEK,¹ *Commissioner of Social Security,*

Defendant.

Before the Court is the Motion for Attorney Fees (ECF No. 26) filed by Plaintiff Victor Montoya. For the following reasons, the Court grants the motion.

Plaintiff filed an application for a period of disability, disability insurance benefits, and supplemental security income on August 15, 2012, alleging onset of disability from August 8, 2012. His claim was denied both initially and upon reconsideration. On January 28, 2015, Plaintiff testified before an Administrative Law Judge (“ALJ”), who, in a decision issued February 24, 2015, analyzed the record and found that Plaintiff had not been under a disability, as defined in the Social Security Act, from August 8, 2012, through the date of the decision. The ALJ’s decision became the final decision of the Commissioner when the Appeals Council denied Plaintiff’s request for review.

On March 2, 2016, Mr. Montoya filed an application to proceed *in forma pauperis* and complaint. ECF No. 1. Following the screening process, Mr. Montoya filed the operative Amended

¹ Leland Dudek became the Acting Commissioner of Social Security on February 16, 2025, and is thus substituted as the defendant in this suit pursuant to Fed. R. Civ. P. 25(d).

1 Complaint. ECF Nos. 2, 4. On August 29, 2016, the Honorable Nancy Koppe, United States
 2 Magistrate Judge, issued a Report and Recommendation (R&R). ECF No. 19. The R&R concluded
 3 that the ALJ Judge incompletely applied the relevant legal standard and recommended the ALJ's
 4 decision be vacated and the case be remanded for further proceedings. *Id.* On November 3, 2016,
 5 the Court adopted the R&R in full and remanded this case for further proceedings. ECF No. 20.

6 On January 9, 2017, the Parties stipulated that Mr. Montoya be awarded attorney fees of
 7 \$3,200 under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(1)(A), as
 8 "compensation for all legal services rendered on behalf of Plaintiff by counsel in connection with
 9 this civil action." ECF No. 22. This stipulation also provided that "payment of the agreed amount
 10 shall constitute a complete release from, and bar to, any and all claims that Victor P. Montoya
 11 and/or [his counsel] may have relating to EAJA attorney fees in connection with this action." *Id.*
 12 However, the stipulation further explained this "award is without prejudice to the rights" of
 13 Plaintiff's counsel "to seek Social Security Act attorney's fees under 42 U.S.C. § 406(b). *Id.* The
 14 Court entered this stipulation. ECF No. 23. On April 4, 2024, Plaintiff's counsel filed the instant
 15 Motion for Attorney's fees. ECF No. 24. On April 22, 2025, Defendant, the Acting Commissioner
 16 of Social Security, filed a response. On July 9, 2025, the parties filed a Joint Request for a Status
 17 Report on the pending Motion. The Court's Order on the pending Motion follows.

18 Mr. Montoya's counsel seeks attorney's fees under 42 U.S.C. § 406(b) based upon the
 19 contingency-fee agreement between Mr. Montoya and his counsel. Counsel seeks \$19,000, which
 20 is 25% of the past-due benefits, for 17.6 reported hours of work, and an order to reimburse Mr.
 21 Montoya \$3,200 for EAJA fees previously paid.

22 Courts may award fees under both the EAJA and § 406(b). *Crawford v. Astrue*, 586 F.3d
 23 1142, 1144 n.3 (9th Cir. 2009). Under § 406(b), the Court may award a fee of up to 25% of the
 24 past-due benefits awarded. 42 U.S.C. § 406(a)(2)(A)(ii)(I). "Courts must 'approach [§ 406(b)] fee
 25 determinations by looking first to the contingency-fee agreement, then testing it for
 26 reasonableness.'" *Crawford*, 586 F.3d at 1149 (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 808
 27 (2002)). Counsel has accurately represented that the representation agreement here provides for
 28 25% of the past-due benefits awarded. The Court finds this contingency fee reasonable under

Gisbrecht based on the contingency nature of the representation, the time spent on the matter, and the result obtained by counsel.

For the foregoing reasons, **IT IS ORDERED** that the Motion for Attorney Fees (ECF No. 26) is **GRANTED**. The Court awards \$19,000 in attorney's fees and costs pursuant to 42 U.S.C. § 406(b), payable to the Law Offices of Lawrence D. Rohlwing, Inc., CPC, to be paid out of Plaintiff's past-due benefits in accordance with agency policy.

IT IS FURTHER ORDERED that Plaintiff's counsel will refund Mr. Montoya the amount of \$3,200 for EAJA funds received.

IT IS FURTHER ORDERED that the Clerk of Court shall amend the caption to substitute Leland Dudek, Acting Commissioner of Social Security, as the defendant in this action.

DATED: July 14, 2025.


